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No. 979

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*,

Petitioners,

vs.

THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

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vs.

THE DENVER & RIO GRANDE WESTERN RAILROAD COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the court of appeals (Pet. 15a-21a) is not yet officially reported. The district court's opinion (Pet. 6a-15a) is reported in 185 F. Supp. 369. The district court's oral opinion of July 27, 1960, appears at R. 45-48. Its findings of fact, conclusions of law, and permanent injunction appear at R. 26-32.

Jurisdiction

The judgment of the court of appeals was entered on April 13, 1961 (Pet. 22a). The petition for a writ of certiorari was filed on May 18, 1961. The jurisdiction of this Court has been invoked under Section 1254 of the Judicial Code.

Questions Presented

1. Whether the enforcement suit remedy provided by

the Railway Labor Act is the exclusive means for enforcing awards of the National Railroad Adjustment Board.

2. Whether a strike over an Adjustment Board award may be enjoined in order to enforce the Railway Labor Act.

Statutes Involved

The pertinent provisions of the Railway Labor and Norris-La Guardia Acts appear in the Appendix, *infra*, pp. 16-18.

Statement

The facts as stated by petitioners are largely uncontroverted and for the most part need not be restated here. However, it should be noted that the strike was not merely "threatened" since petitioners had already commenced their strike and it was not halted until several hours after the temporary restraining order was issued (R. 29, 37, Pet. 7a; cf. Pet. 3, 4, 9, 10). Petitioners' extensive discussion of the merits of the two awards of the Adjustment Board and the references to respondent as a contract violator (Pet. 2, 3, 4, 5-7, 8, 12, 18) require a brief answer too, even though the validity of the awards is not an issue in the present suit.

By quoting carefully selected portions of Award No. 15389 (R. 15-18), petitioners seek to create the impresion that the respondent carrier's actions were in flagrant violation of a well-settled working rule. They neglect to state that the identical issue (the use of head brakemen to herd engines from an inbound train to the tie-up track at North Yard, Denver) had previously been submitted by agreement of the parties to a Special Board of Adjustment (R. 17). Although petitioners agreed that the Special Board's decision would be "final and binding" and would "cover all claims of crews on subsequent dates" (see R. 18),

when the Special Board decided in favor of the carrier in 1952, petitioners ignored their agreement and raised again the very claim which had been rejected by the Special Board. Despite respondent's good faith reliance on the decision which petitioners had agreed would be final and binding (R. 17, 18), the National Railroad Adjustment Board in Award 19389, with five members dissenting, sustained claims for penalties against respondent (R. 18). Referee Sembower said that "each claim must be approached individually as an *ad hoc* matter," even though inconsistent awards resulted (R. 17). The nine claimants were awarded an extra day's pay for each day a head brakeman was required to do the work in question (R. 15, 18-19) although the work requires one employee only a few minutes to perform. After Award No. 19389 was rendered, the carrier ceased the practice complained of (R. 43), and the only remaining controversy is in regard to the payment of the monetary claims. Respondent during the period these claims arose was acting in reliance on the award of the Special Board of Adjustment and the agreement submitting the disputes to that tribunal (R. 17, 18).

Similarly, as to Award 19372 (R. 12-14), in which five Adjustment Board members also dissented, petitioners present only their side of the merits. They neglect to reveal that a provision of the collective bargaining contract empowered respondent to establish "new runs, or new assignments," and that the new assignment did not reduce the employees' earnings or impose additional hardships on them (see R. 13).

Out of 1,045 Adjustment Board or Special Board awards involving respondent since 1934 under the Railway Labor Act, respondent has honored all but these two plainly improper awards (R. 38). Accordingly, the epithets applied to respondent with respect to both awards, totalling an estimated $750,000, are unjustified.

Argument

Applying the decisions of this Court in *Union Pacific R. Co.* v. *Price*, 360 U.S. 601, and *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. Co.*, 353 U.S. 30, the court below correctly held that the Railway Labor Act prohibits strikes over minor grievances, and that Section 3 First (p), providing for enforcement suits, furnishes the exclusive means for enforcing awards of the National Railroad Adjustment Board. Moreover, it is settled that the Norris-La Guardia Act does not prevent the courts from enforcing the Railway Labor Act. There is no conflict of decisions. Therefore the standards justifying the issuance of a writ of certiorari have not been satisfied.

1. In accord with the General Purposes enumerated in Section 2 of the Railway Labor Act, the duty imposed by Section 2 First on employees and carriers to exert every reasonable effort to settle disputes arising out of the application of agreements in order to avoid interruptions to commerce means that the statutory remedies for peacefully resolving controversies must be exhausted.[1] Section 3 First (p), set out in full, *infra*, pp. 17-18, is such a remedy, specifically provided for the kind of dispute involved here over compliance with an award of the Adjustment Board. Petitioners' failure to exhaust this remedy precludes a strike. The enforcement machinery was selected by Congress in 1934 as an appropriate and fair substitute

[1] See *Elgin, Joliet and Eastern R. Co.* v. *Burley*, 325 U.S. 711, 725; *Norfolk & Portsmouth Belt Line Rr Co.* v. *Brotherhood of Railroad Trainmen*, 248 F. 2d 34, 45 (C.A. 4, 1957), certiorari denied, 355 U.S. 914; *Brotherhood of Railway and Steamship Clerks* v. *Railroad Retirement Board*, 239 F. 2d 37, 41, 42 (C.A. D.C., 1956); *American Airlines, Inc.* v. *American Air Line Pilots Assn.*, 169 F. Supp. 777, 783-789 (S.D.N.Y., 1958); *Chicago, R.I. & P.R. Co.* v. *Switchmen's Union*, 187 F. Supp. 581 (W.D.N.Y., 1960).

for the right to strike to enforce awards. As this Court stated in discussing the 1934 amendments relating to minor disputes, "the employees were willing to give up their remedies outside of the statute provided that a workable and binding statutory scheme was established to settle grievances." *Union Pacific R. Co.* v. *Price*, 360 U.S. 601, 613. The remedy in Section 3 First (p) for court enforcement was designed to bar resort to strikes, for in the Railway Labor Act "the specification of one remedy normally excludes another." 360 U.S. at p. 608; *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297, 301. Employees may not strike over unfavorable awards under the *Price* case (360 U.S. at p. 611, note 10). *A fortiori* they may not strike to enforce a favorable award, for there Congress has provided the peaceful remedy of an enforcement suit.

Petitioners, however, argue that the word "may" used in Section 3 First (p) shows that the enforcement suit provision is merely permissive (Pet. 20-21). In the *Chicago River & Indiana* case the identical argument was made with respect to Section 3 First (i) which also uses the word "may" in connection with submissions to the Adjustment Board, but this argument was rejected by the Court in a unanimous decision which held that the Trainmen's contention would render Section 3 First "meaningless." 353 U.S. at p. 34. It has subsequently been held that employees normally *must* submit their claims to the Adjustment Board, notwithstanding the use of "may" in Section 3 First (i). *E.g., Pennsylvania R. Co.* v. *Day*, 360 U.S. 548. The "may" argument was also rejected in *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U.S. 239.

The word "may" was selected to show that employees are not compelled to progress their grievances beyond the property, or, as here, beyond the Adjustment Board. However, if they do decide to progress claims beyond the prop-

erty they must go to the Adjustment Board rather than strike, and if they wish to enforce awards they must go to the District Court in an enforcement suit rather than strike. Where, on the other hand, Congress intended a remedy to be altogether permissive in the sense that either party could avoid resort to it without abandoning its demands, specific language was chosen to make this clear. Section 7 First of the Railway Labor Act says that a controversy "may . . . be submitted to the arbitration of a board." But Congress did not stop there; in order to show that arbitration was voluntary the words "by agreement of the parties" were added and also the proviso that the refusal to agree to arbitration "shall not be construed as a violation of any legal obligation." *Infra*, p. 18.

The legislative history and contemporary understanding of the Railway Labor Act also support the decision below. The 1934 amendments added Section 3 First (p) which made Adjustment Board awards enforceable in court. It was recognized that strikes over minor grievances were now unnecessary. When questioned about that right to strike after a decision by the Adjustment Board, Commissioner Eastman, the draftsman of this legislation, stated that "there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues." Hearings before the House Committee on Interstate & Foreign Commerce on H.R. 7650 (73d Cong., 2d Sess.) p. 61.

The following colloquy was to the same effect:

> "Mr. Pettingill. Your interpretation there, Mr. Commissioner would be that under the language at the bottom of page 17, although the individual may be free to walk out, the organization would not be free to call a strike after an award had been made on those mat-

ters that are covered by the language at the bottom of page 17.

"Commissioner Eastman. Well, that is my understanding; yes sir." (House Hearings, p. 59).

Mr. Carmalt, Eastman's legal advisor, was also of the opinion "that there should not be the right to strike over grievances of this kind" and "that the implication lay from the form of the bill that a strike on account of these minor grievances would not be permitted and might be enjoined. . . . Such an injunctive process as might be necessary to prevent the strike growing out of the settlement of grievances under Section 3, I should believe would be." *Id.* at pp. 62-63.

The principal focus of this discussion was on strikes against Adjustment Board decisions unfavorable to employees. In this situation a strike would be the only recourse a union has, since the Act does not permit employees to obtain judicial review of unfavorable decisions of the Board. *Union Pacific R. Co.* v. *Price*, 360 U.S. 601; *Pennsylvania R. Co.* v. *Day*, 360 U.S. 548. Naturally the denial of the right to strike where an employee has no other recourse was a matter of particular concern to certain Congressmen whose questions prompted the remarks quoted above. Where employees have the right to sue for enforcement of favorable awards, as here, the prohibition on strikes was less drastic and there was less reason for extended comment or questioning. Nevertheless, the above answers of Messrs. Carmalt and Eastman show that they intended there should be no strikes in minor disputes generally. Most significantly, when Commissioner Eastman was asked about enjoining strikes over awards, he said:

"I cannot tell you what the legal procedures would be in enforcing the award, where it is against the em-

ployee. *Paragraph (p) [Section 3 First (p)] covers the case where the carrier does not comply with the order of the adjustment board.*" (Emphasis added; p. 60).

When Mr. Cooper suggested this was "something new," Commissioner Eastman said "exactly similar provisions" were in the current law with respect to arbitration "and this law is in effect an agreement on the part of the parties to arbitrate all these minor disputes. . . . The willingness of the employees to agree to a provision of that sort seemed to me to be a very important and praiseworthy thing." *Ibid.* His final remarks on the problem were that Section 3 First does "provide for compulsory adjustment of individual grievances" in order to avoid strikes (78 Cong. Rec. 12375; cf. Pet. 24).

These statements indicate that however controversial the outlawing of strikes against unfavorable awards might be,[2] it was understood that Section 3 First (p) "covers the case" involved here. Adjustment Board awards would thus be enforced without strikes as are arbitration awards in major disputes, but *all* minor disputes would be so handled. This "very important and praiseworthy" concession by employees would be meaningless if, as petitioners insist, labor organizations can disregard these provisions whenever they see fit.

The understanding of the labor movement in 1934 when the Railway Labor Act amendments were passed is shown in an article written by George Harrison in the October 1934 issue of the *American Federationist*. Mr. Harrison

[2] The Railway Labor Act does in fact outlaw such strikes. *Union Pacific R. Co.* v. *Price*, 360 U.S. 601, 610-611, note 10. This answers the very question as to which Commissioner Eastman expressed doubt (Pet. 24).

pointed out that under the new law, Adjustment Board awards were enforceable in court:

> "The power to enforce decisions of the National Board of Adjustment has been criticized by some on the ground that it constitutes compulsory arbitration. This is denied by the railway labor organizations, who point out that the National Board of Adjustment has jurisdiction only over grievances that arise out of the application and interpretation of rules. The settlement of such grievances and the enforcement of decisions of the adjustment board is merely applying the judicial process to the adjudication of grievances. The fundamental proposition of *changes* in wages, hours and working conditions is still a matter of direct negotiation between the carriers and the unions representing the employees. The mediation and arbitration provisions of the original Railroad Labor Act remain intact, and arbitration in these matters is purely voluntary." (p. 1057) (Italics in original).

If the draftsmen had intended Sections 3 First (p) and 3 First (i) to be voluntary remedies which unions could ignore, Mr. Harrison would have so stated in answer to the criticism of compulsory arbitration. Instead he defended these provisions by saying they applied only to minor disputes; that though grievances were to be governed by "the judicial process," arbitration *in major disputes* was still "purely voluntary." Mr. Harrison appeared at both the Senate and House Hearings on the 1934 Act as chairman of the legislative committee of the Railway Labor Executives' Association.

Petitioners attempt to magnify the importance of the Railway Labor Act issue (Pet. 11-13) without even mentioning the controlling case of *Union Pacific R. Co.* v. *Price*, 360 U.S. 601. In holding there that employees may not obtain judicial review of unfavorable awards, the Court noted that they may not strike over unfavorable awards.

360 U.S. at p. 611, note 10. *A fortiori* they may not strike to enforce a favorable award, for there Congress has provided the peaceful remedy for an enforcement suit. Moreover, in *Pennsylvania R. Co. v. Day*, 360 U.S. 548, also ignored by petitioners, even the dissenting opinion recognized that "under § 3, First (p) of the Act, if a carrier does not voluntarily comply with the Board's award, including wage awards for money damages, a wage earner can enforce the Board's order *only* by bringing, in a United States District Court, a suit" for enforcement. (360 U.S. at pp. 558-559; emphasis added.) The *Price* and *Day* cases were based in large part on the construction of Section 3 First in the *Chicago River & Indiana* case. These three cases are controlling here and make it entirely unnecessary for this Court to devote further attention to Section 3 First of the Railway Labor Act at this time.

The petition attempts to establish a conflict with *General Committee B.L.E. v. Missouri-Kansas-Texas R. Co.*, 320 U.S. 323 (Pet. 17-18). However, that case did not involve a minor dispute or the right to strike, and the statement relied upon by petitioners only notes that other modes for settling minor disputes had been employed in lieu of the new Railway Labor Act procedures.[3] The case merely held that the district courts could not decide jurisdictional disputes between railroad unions because Congress had committed such disputes to the National Mediation Board.

Petitioners also rely on *Union v. Kansas City Terminal Co.*, 352 U.S. 927, for an alleged conflict. (Pet. 16). In that case, a strike had been enjoined although neither the Union

[3] The portion of the opinion quoted by petitioners deals equally with the administrative processes before the Adjustment Board and the enforcement action under Section 3 First (p). 320 U.S. at p. 331 (Pet. 18). If this language ever had the significance attributed to it by petitioners, the dictum has been rejected in the decision in the *Chicago River & Indiana* case.

nor the Carrier had initiated the compulsory arbitration processes of Section 3 First. Since an injunction in that situation operated to maintain a stalemate, this Court vacated the injunction and remanded the cause "without prejudice to the power of the Court of Appeals to reinstate its judgment if the dispute is submitted to the Adjustment Board by either party within a reasonable time" (353 U.S. 927). The Court thus avoided a stalemate by requiring the carrier to invoke its remedies under Section 3 First of the Railway Labor Act.

The instant case is entirely different. No purpose would be served by vacating the judgment below, since respondent cannot initiate an action for review of the Adjustment Board awards in question.[4] The only procedure left under the Railway Labor Act is an enforcement suit brought by petitioners. Respondent, unlike the carrier in the *Manion* case, has done everything in its power to invoke the procedures of the Railway Labor Act and should not therefore be barred from asking petitioners to do the same. The *Manion* decision was carefully analyzed and distinguished in *Louisville & N.R. Co.* v. *Brown*, 252 F. 2d 149 (C.A. 5, 1958), certiorari denied, 356 U.S. 949, in which a strike was held illegal even though the dispute was not pending before the Adjustment Board. The court noted that the carrier in the case before it could not have submitted the dispute to the Board at the time the strike was called. Therefore an injunction "would lie to prevent the frustration of the statutory grievance adjustment procedure." 252 F. 2d at p. 154. In the present case respondent's inability to initiate judicial review should not allow petitioners to frustrate the statutory grievance adjustment procedure. The decision below preserves the jurisdiction of the district court to

[4] *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235 (C.A.D.C., 1941), affirmed by an equally divided Court, 319 U.S. 732.

decide this dispute, just as the *Chicago River & Indiana* decision enabled the Adjustment Board to proceed.

2. Section 4 of the Norris-La Guardia Act does not bar an injunction here, for it is settled that equitable relief may be accorded to enforce the Railway Labor Act. Acknowledging this principle, even petitioners assume "*arguendo* that Section 4 does not prohibit the injunction here involved" (Pet. 25). Congressman La Guardia himself said that railroad employees could not strike until they had exhausted their remedies under the Railway Labor Act. 75 Cong. Rec. 5504. This principle has been recognized in many judicial decisions. *Brotherhood of Railroad Trainmen* v. *Chicago River & Indiana R. Co.*, 353 U.S. 30, 39-42; *Brotherhood of Locomotive Engineers* v. *Missouri-Kansas-Texas R. Co.*, 363 U.S. 528, 531; *Order of Railroad Telegraphers* v. *Chicago and North Western R. Co.*, 362 U.S. 330, 338-339; *Elgin, Joliet & Eastern R. Co.* v. *Burley*, 325 U.S. 711, 725; *Norfolk & Portsmouth Belt Line R. Co.* v. *Brotherhood of Railway Trainmen*, 248 F. 2d 34, 45, 46 (C.A. 4, 1957), certiorari denied, 355 U.S. 914; *Louisville & Nashville R. Co.* v. *Brown*, 252 F. 2d 149, 154 (C.A. 5, 1958), certiorari denied, 356 U.S. 949; *Brotherhood of Railway and Steamship Clerks* v. *Railroad Retirement Board*, 239 F. 2d 37, 41, 42 (C.A.D.C., 1956); and *American Airlines, Inc.* v. *American Air Line Pilots Assn.*, 169 F. Supp. 777, 787 (S.D.N.Y., 1958). See also Comment, "Enjoining Strikes and Maintaining the Status Quo in Railway Labor Disputes," 60 Columbia Law Review 384, 386-391, 396 (1960). Likewise, in *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U.S. 768, the Trainmen, among other things, threatened to strike in order to enforce anti-Negro discriminatory practices (343 U.S. at pp. 769-771). This Court upheld the district court's jurisdiction to issue necessary injunctive orders notwithstanding the Norris-La Guardia

Act (at pp. 774-775). The district court was ordered to award appropriate relief, which necessarily would include enjoining further strike threats.

Respondent is not barred from injunctive relief by Section 8 of the Norris-La Guardia Act, if applicable. (As already shown, it is doubtful that the Norris-La Guardia Act applies.) Petitioners contend that respondent has failed to exert every reasonable effort to settle this dispute under Section 8 (Pet. 14-15, 19-20, 25), which makes such a record a prerequisite to equitable relief. *Infra*, p. 18. The petition implies that respondent made no effort to settle this dispute by negotiation. In fact, respondent did negotiate the claims involved in this case on the property before they were ever submitted to the Adjustment Board (Pet. 5). Respondent also participated before the Board (R. 13, 15), met with petitioners several times after the awards were rendered (R. 41-43), participated in mediation (R. 8, 62), and invited petitioners to settle the dispute peacefully by bringing an enforcement suit (R. 42-43). In short, respondent did everything that could reasonably be expected. It did not continue to negotiate or offer compromises as to the merits of the controversy after the awards were rendered (R. 28), although respondent did terminate the practice complained of in Award 19389 (R. 43). But Section 8 of the Norris-La Guardia Act does not require a plaintiff either to make concessions or to negotiate *ad infinitum*. The duty to negotiate under this provision is comparable to the duty to bargain in good faith under the National Labor Relations Act (*Brotherhood of R. Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U.S. 50, 61, note 18), which does not require the making of concessions or "fruitless marathon discussions," *National Labor Relations Board* v. *American National Insurance Co.*, 343 U.S. 395, 404. This is particularly true of minor disputes, as to

which the rights of the disputants are governed by an existing agreement and can be adjudicated.

Under the National Labor Relations Act employers have no duty to bargain over grievances if machinery for adjusting them has been established (*Timken Roller Bearing Co.* v. *National Labor Relations Board*, 161 F. 2d 949 (C. A. 6, 1947); *National Labor Relations Board* v. *Standard Oil Co.*, 196 F. 2d 892 (C. A. 6, 1952); *National Labor Relations Board* v. *Knight Morley Corp.*, 251 F. 2d 753, 759-60 (C. A. 6, 1957), certiorari denied, 357 U.S. 927), and a union which insists on negotiation is guilty of an unfair labor practice. *Chemical Workers Union*, 123 N.L.R.B. 1507 (1959). The same principle applies to the railroad industry in which the adjustment procedure for minor disputes is provided by statute. Thus the Mediation Board has stated:

> "Where agreements cover the questions in dispute, there is no need for mediation because the issues were intended to be settled by the agreements. To mediate or to compromise such questions may have the effect of modifying or setting aside what was agreed upon. Therefore, such disputes require adjudication just as business contracts often have to be adjudicated in the courts." National Mediation Board, "Administration of the Railway Labor Act, 1934-1957," p. 41.

Petitioners' reliance on *Brotherhood of Railroad Trainmen* v. *Toledo P. & W. R. Co.*, 321 U.S. 50, which involved a major dispute, is unwarranted. A carrier's duty under Section 8 is different in a major dispute because there "the Railway Labor Act does not provide a process for final decision * * *." *Brotherhood of Railroad Trainmen* v. *Chicago R. & I. R. Co.*, 353 U.S. 30, 42, note 24. Moreover, in the *Toledo* case the union agreed but the carrier refused to arbitrate a dispute. The present case represents the oppo-

site situation. The carrier has invited the Trainmen to file an enforcement suit so that the dispute can be settled peacefully, but they have refused. Therefore the blame for the strike lies squarely on the union rather than on the carrier.

Conclusion

The decision below is correct and required by recent decisions of this Court. No unsettled question of importance is actually presented, and there is no conflict of decisions. Accordingly, a writ of certiorari should not issue.

Respectfully submitted.

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June 1961.

APPENDIX

Section 2 of the Railway Labor Act provides (45 U.S.C. § 151a):

"General Purposes

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Section 2 First of the Railway Labor Act provides (45 U.S.C. § 152 First):

"General Duties

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 3 First (i) of the Railway Labor Act provides (45 U.S.C. § 153 First (i)):

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of

grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.".

Section 3 First (p) of the Railway Labor Act provides (45 U.S.C. § 153 First (p)):

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing

actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board."

Section 3 First (q) of the Railway Labor Act provides (45 U.S.C. § 153 First (q)):

"(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after."

Section 7 First of the Railway Labor Act provides (45 U.S.C. § 157 First):

"First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties, or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise."

Section 8 of the Norris-La Guardia Act provides (29 U.S.C. § 108):

"No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."